IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 1 OF 2006

IN

WRIT PETITION NO. 200 OF 2005

SHRI TUKARAM SHANKAR ARONDEKAR AND 2 ORS., ...Applicants

Versus

SHRI RAMA SAJULO GAD AND ANR., ...Respondents

Shri S. Vahidulla, Advocate for the Applicants.
Shri S.R. Rivonkar, Advocate for the Respondents.

Coram:- N. A. BRITTO, J.

Date:- 4th January, 2006

P.C.:

Heard Shri Vahidulla, learned Advocate on behalf of the applicants/plaintiffs and Shri Rivonkar, learned Advocate on behalf of the respondents/defendants.

2. The plaintiffs having filed a suit and in the said Civil Suit an application for temporary injunction bearing No.CMA 178/04, the learned Civil Judge was pleased to pass an order of maintenance of status quo as regards the right of way/suit access claimed by the said plaintiffs. The plaintiffs have claimed the suit access of a width of about 2.5 metres. With the allegation that the defendants were doing construction in the suit access, the plaintiffs filed an application dated 16.3.05 under S.151 C.P.C. which came to be dismissed by the Order dated 16.5.05 by the learned Civil Judge S.D. Against this Order, the plaintiffs preferred Writ Petition No.200/05, but the Writ Petition came to be dismissed for want of

prosecution on 20.12.05.

3. It is submitted on behalf of the defendants that prior to the dismissal of the said Writ Petition, the plaintiffs had filed an application for temporary injunction before this Court which was withdrawn on 2nd December, 2005. After the dismissal of the Writ Petition, the defendants filed an application before the learned Civil Judge S.D. on 20.12.05 and started with their proposed construction which can be seen at page 16 of the C.A. No.1/06. Upon instructions obtained, learned Advocate Shri Rivonkar submits that the distance between the RCC column as seen on the said photograph and the cowshed of the plaintiffs is about 3.75 m., the same being the distance which was also noted by the Commissioner in the site inspection sketch dated 19.4.05 and that the defendants would be proceeding with their construction by leaving the said distance of 3.75 m.

4. Shri Vahidulla, the learned advocate on behalf of the plaintiffs submits that the said distance is not 3.75 m. but the same is less than 2 m.

5. However, it is to be noted that the plaintiffs' application for temporary injunction namely CMA No.178/04 is yet to be disposed of by the learned Civil Judge S.D., Bicholim. The learned Civil Judge is hereby directed to dispose of the same as expeditiously as possible and in any event within thirty days from the date of receipt of this Order.

6. In view of the statement made by Shri Rivonkar, upon instructions from the defendants that the open space as seen from the photograph at page 16 and which according to the defendants is 3.75 m., the same would be maintained and the defendants would proceed with their construction by maintaining the same. In the light of the said statement, nothing survives in this application and the same is accordingly disposed of.

N. A. BRITTO, J.

sl.